

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 900/2019

Date of Institution ... 05.07.2019

Date of Decision ... 26.06.2019

Mr. Muhammad Haroon, Muslim Sweeper (BPS-01) DHQ Hospital, Battagram.

... (Appellant)

VERSUS

The Director General Health Services, Khyber Pakhtunkhwa Peshawar and others. ... (Respondents)

Mr. Mir Zaman Safi,  
Advocate.

... For appellant

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MR. HAMID FAROOQ DURRANI,

... CHAIRMAN

JUDGMENTHAMID FAROOQ DURRANI, CHAIRMAN:-

1. The prayer of instant appeal is essentially to the effect that the respondents shall consider the appellant for promotion/adjustment against any other Class-IV post while at present the appellant is serving as Sweeper (Muslim) in BPS-01. The appellant has relied on the minutes of meeting dated 12.07.2006 regarding problems of Class-IV Paramedic employees. Inter-alia, the decision was taken in the meeting to promote the Muslim Sweepers against the existing vacancies of Ward Orderly, Chowkidar, Mali, Dai, Aya and other Class-IV posts on seniority basis and not to appoint the Muslim Sweepers against the posts of Sweeper in future. Reliance is also placed on order issued by the Secretary to Government of Khyber Pakhtunkhwa Health

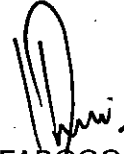
Department on 16.02.2017. In the order it is noted that those who were appointed as Muslim Sweepers before 12.07.2006 were entitled for adjustment against the aforementioned posts without disturbing the quota reserved under the rules for appointment of Class-IV Government Servants etc. It was, however, provided in the order that those who were appointed as Muslim Sweepers after 12.07.2006 were not covered under the policy.

2. This Tribunal decided a number of appeals through judgment dated 13.12.2018 handed down in Appeal No. 639/2017 (Lutf-E- Hakeem Vs. the Secretary Government of Khyber Pakhtunkhwa Health Department and others) in terms that the cut-off date mentioned in the order dated 16.02.2017 and 12.07.2006 shall be treated as expunged. In the said manner the benefit of decision made on 12.07.2006 as well as order dated 16.02.2017 was to be extended to the Muslim Sweepers appointed after 12.07.2006. The issue having been settled once by this Tribunal entails the extension of benefits to employees placed similar to those whose appeals were decided, in affirmative, on 13.12.2018.

3. Learned counsel after arguing the case at some length stated that the appellant would be satisfied at present in case he is considered for promotion to a Class-IV post other than that of Sweeper by the respondents in accordance with law.

4. As the issue of promotion of Muslim Sweeper having been appointed before and after 12.07.2006 has been repeatedly settled by this Tribunal as well as the Honourable Peshawar High Court, the respondents shall consider the appellant for requisite promotion in the order of seniority and his otherwise eligibility under the rules.

5. The appeal is accordingly disposed of. File be consigned to the record room.



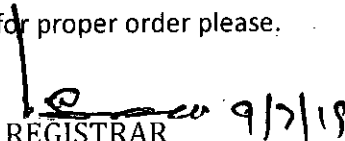

(HAMID FAROOQ DURRANI)  
CHAIRMAN

ANNOUNCED  
11.07.2019

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No.- \_\_\_\_\_ 900/2019 \_\_\_\_\_

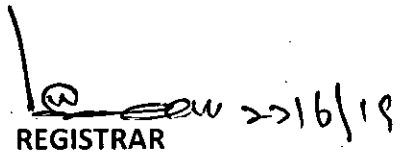
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	09/07/2019	<p>The appeal of Mr. Muhammad Haroon resubmitted today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR 9/7/19</p>
2-		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>11/07/19</u></p> <p> CHAIRMAN</p>

The appeal of Mr. Muhammad Haroon Muslim Sweeper DHQ Hospital Battagram received today i.e. on 26.06.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of appointment order of the appellant as Muslim Sweeper mentioned in para-1 of the memo of appeal is not attached with the appeal which may be placed on it.
- 2- Annexure-D of the appeal is illegible which may be replaced by legible/better one.

No. 11357 /S.T,

Dt. 27-6- /2019.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Noor Muhammad Khattak Adv. Pesh.

*Note:*

*Sir,*

*All objections have been removed,  
hence re-submitted today dated 9/7/2019.*

*9/7/2019.*

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR**

APPEAL NO. 900 /2019

**MUHAMMAD HAROON**

**VS**

**HEALTH DEPTT:**

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**APPELLANT**

**THROUGH:**

**NOOR MOHAMMAD KHATTAK  
ADVOCATE**

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Khyber Pakhtunkhwa  
Service Tribunal

APPEAL NO. 900 /2019

Diary No. 297

Mr. Muhammad Haroon, Muslim Sweeper (BPS-1),  
DHQ Hospital, Battagram.....

Dated 26/6/2019

**APPELLANT**

**VERSUS**

- 1- The Government of Khyber Pakhtunkhwa through Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.
  - 2- The Director General Health Department, Khyber Pakhtunkhwa, Peshawar.
  - 3- The District Health Officer, District Battagram.
  - 4- The Medical Superintendent DHQ Hospital Battagram, District Battagram.....
- RESPONDENTS**

**SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 16.02.2017 WHEREBY THE APPELLANT HAS BEEN IGNORED/EXCLUDED FROM PROMOTION/ADJUSTMENT AGAINST ANY OTHER CLASS-IV POST AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS**

**PRAYER:**

That on acceptance of this appeal the impugned Notification dated 16.2.2017 may kindly be modify to the extent that the appellant may be considered for promotion/adjustment against any other Class-IV post in light of the policy dated 25-07-2006 from the date when his other colleagues were promoted/adjusted. Any other remedy which this Honorable Tribunal deems appropriate that may also be awarded in favor of the appellant.

**R/SHEWETH:**

**ON FACTS:**

- 1- That appellant is the employee of the respondent Department and is serving as Sweeper (Muslim) for quite considerable time efficiently and upto the entire satisfaction of his superiors. Copy of the appointment order is attached as annexure ..... **A.**
- 2- That vide Notification dated 25.7.2006 the respondent Department including autonomous institutions have unanimously decided that all the Health Institutions should promote the Muslim Sweepers against the existing vacancies of Ward Orderly, Chowkidar, Mali, Dayi, Aya and other Class-IV posts on seniority basis and not to appoint Muslim Sweepers against the post of sweeper in future. Copy of the policy is attached as annexure ..... **B.**

Filed to-day

Registrar

26/6/19

Re-submitted to-day  
and filed.

Registrar  
9/7/19

3- That appellant in light of the above mentioned Notification dated 25.7.2006 applied for his adjustment/promotion against the class-IV post other than sweeper but no reply was received from the respondent Department.

4- That other colleagues of the appellant were filed writ petition No.181-M/2013 before the Honorable Peshawar High Court Mingora Bench and the Honorable High Court converted the said writ petition into representation with the direction to Secretary Health Department to decide the said Departmental appeal/representation in light of the above mentioned Policy. Copy of the Judgment is attached as annexure.....**C.**

5- That in response to the above mentioned Judgment the respondent Department issued the impugned Notification dated 16.2.2017 where in the Secretary Health i.e. respondent No.1 issued direction to the concerned authorities to promote/adjust those Muslim Sweepers who were appointed before the issuance of the policy dated 25.07.2006. That feeling aggrieved from the impugned Notification dated 16.2.2017 the said colleagues of the appellant filed connected Service appeals before this august Tribunal in title " Lutf-e-Hakim & others vs Secretary Health & others" and the same have been allowed this august Tribunal vide judgment dated 13.12.2018. Copies of the Notification dated 16.2.2017 and judgment are attached as annexure ..... **D & E.**

6- That appellant filed Departmental appeal before the appellate authority for same relief granted to other colleagues of the appellant but no reply has been received so far. That appellant feeling aggrieved from the inaction of the respondents by not considering the appellant for adjustment against the other class-iv posts preferred the present appeal on the following grounds amongst the others. Copy of the Departmental appeal is attached as annexure.....**F.**

**GROUND:**

A- That the impugned Notification dated 16.02.2017 is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be modified.

B- That appellant has not been treated in accordance with law and rules by the respondent Department on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic republic of Pakistan 1973.

C- That appellant has been discriminated by the respondents on the subject noted above and as such the respondents violated the Rules regulations of the Provincial Government.



- D- That the Notification dated 16.2.2017 of the respondent Department is based on favoritism and nepotism, therefore not tenable and liable to be modified.
- E- That the impugned Notification is violative of Article 38(e) of the Constitution of Pakistan 1973.
- F- That the appellant is also entitle for the same relief under the principle of consistency which was granted to other colleagues of the appellant.
- G- That the respondents acted in arbitrary and malafide manner by ignoring the appellant from promotion /adjustment on any Class-IV post in light of the policy dated 25.7.2006.
- H- That the impugned Notification dated 16.2.2017 has been issued by the respondents in utter disregard of law and Rules.
- I- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

Dated: 21.6.2019

**APPELLANT**

  
**MUHAMMAD HAROON**

**THROUGH:**

  
**NOOR MOHAMMAD KHATTAK**  
**ADVOCATE**

**(Mobile No.0345-9383141)**

BETTER COPY OF PAGE-6

**GOVERNMENT OF NWFP**  
**HEALTH DEPARTMENT**

No. SOH-III/1-179/06 (Class-IV),  
Dated 25<sup>th</sup> July, 2006

- 1)- The Director General health Services, NWFP, Peshawar.
- 2)- The Chief Executives, LRH/KTH/HMC, Peshawar and ATH Abbottabad.
- 3)- Dr. Muhammad Rahim Jan, Director Admn Directorate General Health Services, NWFP, Peshawar.
- 4)- Dr. Abdus Sabooh Bacha, Medical Supdt, Hayatabad Medical Complex, Peshawar.
- 5)- Dr. Iftikhar Ahamd, Deputy Medical Supdt, Ayub Teaching Hospital, Abbottabad.
- 6)- Dr. Farman Ali, RMO, Khyber Teaching Hospital, Peshawar.
- 7)- Mr. Javed Khan, President Provl, Paramedical Association, Calss-IV Employees, NWFP, Peshawar.

Subject: **MINUTES OF MEETING REGARDING PROBLEMS OF CLASS-IV PARAMEDICS EMPLOYEES**

I am directed to refer to the subject and to enclose herewith a copy of minutes of subject meeting held on 12.07.2006, at 10:00 hours, under the chairmanship of Secretary health, duly signed by all the participants for further necessary action please.

For

Section Officer-III

Subject: MINUTES OF MEETING REGRADING PROBLEMS OF CLASS-IV PARAMEDICS EMPLOYEES

A meeting on the subject was held under the chairmanship of Secretary Health Department Committee Room of Health Deptt: on 12/07/2006 at 10:00 AM.

2- The Following attended the meeting:

- 1- The Director General health Services, NWFP, Peshawar.
- 2)- The Chief Executives, LRH/KTH/HMC, Peshawar and ATH Abbottabad.
- 3)- Dr. Muhammad Rahim Jan, Director Admn Directorate General Health Services, NWFP, Peshawar.
- 4)- Dr. Abdus Sabooh Bacha, Medical Supdt, Hayatabad Medical Complex, Peshawar.
- 5)- Dr. Iftikhar Ahamd, Deputy Medical Supdt, Ayub Teaching Hospital, Abbottabad.
- 6)- Dr. Farman Ali, RMO, Khyber Teaching Hospital, Peshawar.
- 7)- Mr. Javed Khan, President Provl, Paramedical Association, Calss-IV Employees, NWFP, Peshawar.
- 8)- Mr. Naseer Khan, General Secretary, Provl, Paramedical Association, Calss-IV Employees, NWFP, Peshawar.
- 9)- Mr. Hakim Jan, General Secretary, Provl, Paramedical Association, Calss-IV Employees, Hayat Abad Medical Complex, Peshawar.

3- The meeting started with recitation of the Holy Quran.

4- The Chair welcomed the participants.

5- The demands presented by the Provl, Paramedical Association, Calss-IV Employees, were discussed in detail and the following decision were taken.

- i. The Association demanded that service structure for Class-IV employees, Paramedical employees, may also be framed.

#### Decision

It was decided that the Director General Health Services NWFP will come up with a self contain case with full justification. The demand will be recommended and will be forwarded to Finance Department.

- ii. The Association demanded that Contract Policy may be implemented in Teaching and all other Health institution of the Province.

#### Decision

It was decided that the Director General Health Services and all the Chief Executives of Health Institutions may be directed to implement the Contract Policy of the Provincial Government and all other relevant instructions in letter and spirit.

- iii. The Association demanded that children of retired Class-IV paramedics employees may be given preference when appointments are made against the vacant posts in Health Institutions.

**Decision**

It was decided that instructions circulated by the Health Department vide letter No. SOHIII/7-350/95-I dated 01.11.1997, may be followed strictly. The Medical Supdt. Khyber Teaching Hospital, should submit a report within fortnight in this regard.

- iv. The Association demanded advance increments on the basis of higher qualifications for Class-IV paramedical employees.

**Decision**

It was decided that instructions of Finance Department, in this regard will be implemented strictly in all Health Institutions.

- v. The Association demanded relaxation of science subjects for admission in different health technology courses, for Class-IV paramedical employees.

**Decision**

It was decided that if any Class-IV paramedical employee has completed the required qualification for admission in different health technology courses, according to the prescribed criteria, may be allowed to participate in the examination of different health technologies, conducted by NWFP, Medical Faculty, after completion of all codal formalities.

- vi. The Association demanded that all Class-IV employees may be promoted to Class-III posts, existing in different Health Institutions.

**Decision**

It was decided that Class-IV employees may be given preference while filling the posts of promotion quota for 33% Selection Grade for Class-IV paramedical employees.

- viii. The Association demanded Dress/Washing Allowance for all Class-IV Paramedical employees.

**Decision**

It was decided that the Director General Health Services, and all Chief Executives should submit a self contained case with total strength of Class-IV paramedical employees and propose Dress/Washing Allowance for Class-IV paramedical employees required to be considered with full justification.

- ix. The Association demanded that the Muslim Sweeper in each Health Institution may be promoted to the post of Ward Orderly, Chowkidar, Mali, Dai, Aya and other Class-IV posts on seniority basis in future; only sweepers may be appointed against the posts of sweeper.

**Decision**

It was decided that all the Health Institutions should promote the Muslim Sweeper against the existing vacancy of Ward Orderly, Chowkidar, mali, Dai, Aya and other Class-IV posts, on seniority basis and not to appoint Muslim Sweeper against the post of Sweeper in future.

- x. The Association demanded that 8 hours duty may be taken from Class-IV paramedical employees as per rules and they may be granted leave according to rules.

**Decision**

It was decided that instructions of Government regarding duty hours should be implemented in letter and spirit and requests of Class-iv employees for grant of leave should also be considered on merit and according to rules. However, Heads of all the Health Institutions are advised to keep a vigilant eye on the performance of Class-IV paramedical employees.

- 6- The meeting ended with a vote of thanks by the Chair

OFFICE OF THE EXECUTIVE DISTRICT  
OFFICER (HEALTH) BATAGRAM

No. 2426 PF Dated: 23/03/2009

A- (54)

To:

Mr. Muhammad Hassan s/o. Muhammad Ayub  
R/O Village Thakhat Tehsil & Distt: Battagram

Subject:  
Memo:

APPOINTMENT ORDER AS Chaukidar

Reference your application dated Nil, consequent upon the approval of the competent authority, you are hereby appointed as Chaukidar BPS- I against the vacant post of Chaukidar at District Health Quarter Hospital Battagram on the following terms and conditions:-

1. You will be placed as Chaukidar BPS- 2970-20-5670 Per Month with other facilities as permissible to the Government servant of the same scale.
2. Your services will be governed under the Government of NWFP contract policy 2002.
3. Your appointment will be subject to provide Medical Fitness Certificate (Health & Age) for Government service from Medical Superintendent DHQ Hospital Battagram.
4. If you wish to resign from service, two month advance notice or to deposit two month salary in lieu of.
5. Your service can be terminated at any time with out any reasons by the competent authority.
6. You will be provided the same facilities under C.P fund as admissible to the Government servant as the rates to be prescribed by the government. 05% of minimum pay be the employee and 05% contribute by the Government.
7. You will not contribute to GP Fund and shall not be entitle for pension and gratuity benefits.
8. Where the employee remains absent with out leave for a period of Seven (07) days he/she shall be deemed to have violated the relevant contract provisions and shall be terminated from service.
9. The contract employee shall be responsible for all utility bills and other charges pf residential accommodation as is applicable to the same category of staff.
10. The contract employee shall be subject to all rules of Govt: pertaining to a Civil Servant rules, in respect of efficiency and discipline, conduct, liability to criminal proceeding etc and any special rules, instructions issued by the Health Department specified to employees for breach of discipline or unsatisfactory service. The Health Department competent to terminate the contract employee without notice or compensation.
11. No contract employee shall indulge in any trade, business or occupation or any activities, which is prohibited for a regular Govt: servant.
12. Spouse policy shall not be applicable to the contract employee.
13. Yours appointment is purely temporary basis.
14. No TA/DA will be allowed for joining the duty or Medical fitness certificate
15. If you accept the offer of appointment on above terms and conditions, you should report Medical superintendent DHQ Hospital Battagram for duty with in 15 days of the issuance of this order. The offer will be cancelled, if you fail to report for duty with in the above mentioned period.

Executive District Officer  
Health Battagram

No. \_\_\_\_\_ PF

Copy forwarded to the:-

1. Director General Health Services, NWFP Peshawar.
2. District Coordination Officer Battagram.
3. District Accounts Officer Battagram
4. Medical superintendent DHQ Hospital Battagram.
5. Accounts Section undersigned office.

Executive District Officer  
Health Battagram

ATTESTED

*[Handwritten Signature]*

ATTESTED

*[Handwritten Signature]*

Subject: MINUTES OF MEETING REGARDING PROBLEMS OF CLASS-IV PARAMEDICS EMPLOYEES.

(B) (703) (P)  
(B) (S)  
B-5

A meeting on the subject was held under the chairmanship of Secretary Health Department in Committee Room of Health Dept on 12/07/2006 at 10:00 AM.

2- The following attended the meeting:

- 1) Mr. Abdus Samad Khan, Secretary to Govt. of NWFP, Health Dept.
- 2) Prof. Abdus Samad Khan, Chief Executive, Govt. Lady Reading Hospital, Peshawar.
- 3) Dr. Muhammad Rahim Jan Afridi, Director Admn., Directorate General Health Services, NWFP, Peshawar.
- 4) Dr. Abdus Sabooh Sacha, Medical Supdt., Hayatabad Medical Complex, Peshawar.
- 5) Dr. Iflikhar Ahmad, Deputy Medical Supdt., Ayub Teaching Hospital, Abbottabad.
- 6) Dr. Farman Ali, RMO, Khyber Teaching Hospital, Peshawar.
- 7) Mr. Javed Khan, President, Provl. Paramedical Association Class-IV Employees, NWFP, Peshawar.
- 8) Mr. Naseer Khan, General Secretary, Provl. Paramedical Association Class-IV Employees, NWFP, Peshawar.
- 9) Mr. Hakim Jan, General Secretary, Provl. Paramedical Association Class-IV Employees, Hayatabad Medical Complex, Peshawar.

3- The meeting started with recitation of the Holy Quran.

4- The Chair welcomed the participants.

5- The demands presented by the Provl. Paramedical Association Class-IV Employees, were discussed in detail and the following decision were taken

- i) The Association demanded that service structure for Class-IV paramedical employees, may also be framed.

Decision

It was decided that the Director General Health Services NWFP will come up with a self-contain case with full justification. The demand will be recommended and will be forwarded to Finance Department.

- ii) The Association demanded that Contract Policy may be implemented in Teaching and all other Health Institution of the Province.

Decision

It was decided that the Director General Health Services, and all the Chief Executives of Health Institutions may be directed to implement the Contract Policy of the provincial Government and all other relevant instructions in letter and spirit.

18/7/06  
ATTESTED

ATTESTED

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iii) The Association demanded that children of retired Class-IV paramedical employees may be given preference when appointments are made against the vacant posts in Health Institutions.

Decision

It was decided that instructions circulated by the Health Department vide letter No. SOHIII/7-350/95-I dated 01.11.1997, may be followed strictly. The Medical Supdt., Khyber Teaching Hospital, should submit a report within fortnight in this regard.

iv) The Association demanded advance increments on the basis of higher qualifications, for Class-IV paramedical employees.

Decision

It was decided that instructions of Finance Department, in this regard will be implemented strictly, in all Health Institutions.

v) The Association demanded relaxation of science subjects for admission in different health technology courses, for Class-IV paramedical employees.

Decision

It was decided that if any Class-IV paramedical employee has completed the required qualification for admission in different health technology courses, according to the prescribed criteria, may be allowed to participate in the examination of different health technologies, conducted by NWFP, Medical Faculty, after completion of all codal formalities.

vi) The Association demanded that all Class-IV employees may be promoted to Class-III posts, existing in different Health Institutions.

Decision

It was decided that Class-IV employees may be given preference while filling the posts of promotion quota as per rules.

vii) The Association demanded for 33% Selection Grade for Class-IV paramedical employees.

Decision

It was decided that the demand of 33% Selection Grade will be included in revised service structure of Class-IV paramedical employees.

viii) The Association demanded Dress/Washing Allowance for all Class-IV paramedical employees.

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ATTESTED

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ATTESTED

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ATTESTED

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Decision

(2)

It was decided that the Director General Health Services, and all Chief Executive, should submit a self contained case with total strength of Class-IV paramedical employees and propose Dress/Washing Allowance for Class-IV paramedical employees required to be considered, with full justification.

ix) The Association demanded that the Muslim Sweeper in each Health Institution may be promoted to the post of Ward Orderly, Chowkidar, Mahi Dai, Aya and other Class-IV posts, on seniority basis. In future, only sweeper may be appointed against the posts of sweeper.

Decision

It was decided that all the Health Institutions should promote the Muslim Sweeper against the existing vacancy of Ward Orderly, Chowkidar, Mahi Dai, Aya and other Class-IV posts, on seniority basis, and not appoint Muslim Sweeper against the post of Sweeper in future.

x) The Association demanded that 8 hours duty may be taken from Class-IV paramedical employees as per rules and they may be granted leave according to rules.

Decision

It was decided that Instructions of Government regarding duty hours should be implemented in letter and spirit and requests of Class-IV employees for grant of leave should also be considered on merit and according to rules. However, Heads of all the Health Institutions are advised to keep a vigilant eye on the performance of Class-IV paramedical employees.

6- The meeting ended with a vote of thanks by the Chair.

(PROF. ABDUS SAMAD KHAN)  
Chief Executive,  
Govt. Lady Reading Hospital,  
Peshawar

(DR. MUHAMMAD RAHIM JAN AFRIDI)  
Director Adm.,  
Directorate General Health Services,  
NWFP, Peshawar

(DR. ABDUS SABOOR BACHA)  
Medical Superintendent,  
Hayatabad Medical Complex,  
Peshawar

(DR. IFTIKHAR AHMAD)  
Deputy Medical Super,  
Ayub Teaching Hospital,  
Abbottabad

**ATTESTED**

**ATTESTED**

⑤  
⑥  
⑦  
⑧

*F.A. Ali*  
18/7/06  
(DR. FARMAN ALI)  
Resident Medical Officer,  
Khyber Teaching Hospital,  
Peshawar ✓

*Javed Khan*  
(MR. JAVED KHAN)  
President,  
Provl. Paramedical Association  
Class-IV Employees,  
NWFP, Peshawar ✓

*Naseer Khan*  
(MR. NASEER KHAN)  
General Secretary,  
Provl. Paramedical Association  
Class-IV Employees,  
NWFP, Peshawar ✓

*Hakim Jan*  
(MR. HAKIM JAN)  
General Secretary,  
Provl. Paramedical Association  
Class-IV Employees,  
Hayatabad Medical Complex, Peshawar ✓

*13*

*Samad*  
15/7/06  
(MR. ABDUS SAMAD KHAN)  
Secretary to Govt. of NWFP,  
Health Department ✓

ATTESTED

*q*

ATTESTED

*q*

ATTESTED

*q*

- 1 -

JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT,  
MINGORA BENCH (DAR-UL-QAZA), SWAT  
(Judicial Department)

W.P No. 181-M/2013

JUDGMENT

Date of hearing: 24.01.2017

Petitioners: (Aminullah and others) by  
Mr. Noor Muhammad Khattak, Advocate.

Respondents: (Additional Chief Secretary FATA etc) by  
Mr. Sabir Shan, A.A.G.

MUSARRAT HILALI, J. Through this single judgment, we intend to dispose of the instant writ petition as well as the connected W.P No. 510-M/2014, W.P No. 450-M/2015 and W.P No. 551-M/2015 as all the matters involve common questions of law and facts.

2. Grievance of the present writ petitioners is that they were appointed as Sweepers (BPS-1) in Health Department, Bajaur Agency vide order dated 20.08.2003 and since then they are looking for their promotion to higher posts of Class-IV despite they moved a departmental appeal to the high ups in this regard. They have prayed this Court that, being eligible and qualified, they be promoted to the 28 posts of Ward Orderly (BPS-2) recently advertised by the Health Department on seniority basis.

**ATTESTED**

*[Handwritten signature]*

**ATTESTED**

ATTESTED

ATTESTED

*[Handwritten signature]*

Petitioners Muhammad Haq and 11 others in their petition bearing W.P No. 551-M/2015 have averred that they were appointed as Muslim Sweepers in DHQ Hospital Timergara, Dir Lower and according to Government Policy of Health Department, all the Muslim Sweepers in Health

Petitioners in W.P No. 510-M/2014 were also appointed as Sweepers in DHQ Hospital Timergara, Dir Lower in 2009 and now they are seeking their promotion to the 12 posts of Ward Orderly/Attendants (B/S-?) recently created by the Health Department vide notification bearing No. BVI/ED/4/38/2010-11/VCL-III dated 10.04.2014. Similarly, petitioners in W.P No. 450-M/2015 have asserted that they were appointed as Muslim Sweepers in Saidi Teaching Hospital, Saidu Sharif Swat but despite clear cut policy of the Government of Khyber Pakhtunkhwa Health Department notified vide No. SOH-III/1-179/06 dated 25.07.2006, they are not given a chance of promotion to 54 vacant posts of Ward Orderly, Chowkidar, Mali, Dai, Aya etc. Petitioners have prayed for their promotion to the mentioned vacant posts on the basis of their seniority as per Government policy.

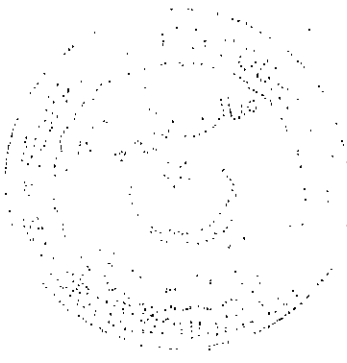
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*[Handwritten mark]*

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Department shall be promoted to the vacant posts of Ward Orderly, Chowkidar, Mali and other Class-IV employees on seniority basis and no Muslim shall be appointed against the post of sweeper in future. Petitioners have further asserted that the Health Department, in derogation of the policy, advertised 28 posts of Class-IV and while ignoring the petitioners, respondents No. 7 to 14 were appointed which is illegal. Petitioners have prayed for their promotion on seniority basis in accordance with law and policy of the Provincial Government.



3. Learned counsel for the petitioners hotly argued the case and, inter alia, submitted that there is a proper policy of the Provincial Government regarding promotion of the existing Muslim Sweepers which needs to be acted upon by the Health Department in letter and spirit.

4. Learned A.A.G. and learned counsel appearing for private respondents, contended that actually there is no policy regarding promotion of Muslim Sweepers in the field and the one referred to by the petitioners is in fact minutes of a meeting. Further contended that petitioners are civil servants and their claim for promotion falls within the terms

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and conditions of their service, therefore, these writ petitions are not maintainable before this Court.

5. Arguments heard and record perused.

6. In essence, case of the petitioners is that of promotion from their existing posts (sweepers) to other higher posts on the strength of a Government policy per their stance. Since, promotion is one of the terms and conditions of civil service and jurisdiction of this Court is clearly barred under Article 212 of the Constitution in the like matters, however, keeping in view the peculiar circumstances of the present cases and judgment dated 13.10.2011 rendered by this Court in an identical W.P No. 102/2011, this Court deems it proper to convert all these petitions into representations and send the same to the competent authority for consideration.

7. In view of the above, the instant writ petition as well as the connected W.P No. 510-M/2014, W.P No. 450-M/2015 and W.P No. 551-M/2015 are converted into representations. Office is directed to send the original petitions to the Secretary Health, Government of Khyber Pakhtukhwa for deciding the matters in writing with reasons positively within a period of one month from the date of receipt of this judgment under

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intimation to the Additional Registrar of this Court. Office is further directed to retain copies of the writ petitions for record. The writ petitions are disposed of accordingly.

(S)  
(13)

Sd. Musarat Hilal-J  
Sd. Mehmood Ibrahim Khan-J

Announced.  
Dt: 24.01.2017

Case No. 475  
Name of Applicant: Sd. Musarat Hilal  
Date of filing of application: 26.1.17  
Date of disposal: 31.1.17  
Page No. 59  
Page No. 10/17  
Date of disposal: 31.1.17

Office  
27/1

Certified to be true copy

*[Signature]*  
Sd. Mehmood Ibrahim Khan  
Additional Registrar  
31/1/17

ATTESTED

*[Signature]*

ATTESTED

*[Signature]*

ORDER

GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

No. SOH-(LH-1) 1-1/2017 (Gen. Misc.)  
Dated Peshawar the 16<sup>th</sup> February, 2017

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WHEREAS attention is invited to the minutes of the meeting dated 12.07.2006 held under the Chairmanship of Secretary Health Khyber Pakhtunkhwa circulated vide Govt of Khyber Pakhtunkhwa Health Department letter No. SOH-III/1-179/06 (Class-IV) dated 25.07.2006, Extract of the decision taken in the meeting is reproduced below:-  
Decision:-

It was decided that all the Health Institutions should promote the Muslim Sweeps against existing vacancies of Ward Orderly, Chowkidar, Mali, Dal, Aya and other Class-IV posts, on seniority basis and not to appoint Muslim Sweeps against the post of Sweeps in future.

AND WHEREAS the above decision was also affirmed by the Hon'ble Peshawar High Court Peshawar vide judgment dated 27.09.2013 in Writ Petition No.293-192013 - Title: "Moor ul Qamar S/O Shams ul Qamar Muslim Sweeper THO Hospital Shabqadar, District Charsadda & 9 others versus Govt of Khyber Pakhtunkhwa Health Department & others.

HOW THEREFORE in pursuance of the above decision taken/judgment of the Hon'ble Court, it is sufficiently clear that those who were appointed as Muslim Sweeps before 12.07.2006 are entitled for adjustment against the aforementioned posts without disturbing the quotas reserved under the Rules for appointment of Class-IV Govt. Servants and children of Retiring/Incapacitated/deceased civil servants etc. However, those who were appointed as Muslim Sweeper after 12.07.2006 in violation of the above decision/judgment are not covered under the policy.

SECRETARY TO GOVT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT

Serial No. & Date even  
Copy of the above is forwarded to the:-

1. The Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
2. The Director Health Services, FATA.
3. All District Health Officers in Khyber Pakhtunkhwa.
4. All District Superintendents of Hospitals in Khyber Pakhtunkhwa.
5. All District Director-Hospital Directors of MTRs in Khyber Pakhtunkhwa.
6. 12 to Senior Minister Health, Khyber Pakhtunkhwa.
7. 13 to Secretary Health, Khyber Pakhtunkhwa.
8. Provincial President Paramedical Class-IV Employees Association, LRH, Peshawar.

(Signature)  
Section Officer (LH)

DIRECTOR ATE OF HEALTH SERVICES FATA, PESHAWAR  
No. / S-5-26 / DHS/FATA/Admn  
Date: 08/13/2017

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Copy is forwarded to the:-

1. All Agency Surgeons in FATA/PRS.
  2. All Medical Superintendents in FATA.
- For information and further necessary action.

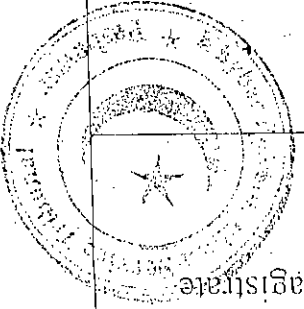
Director Health Services  
FATA Peshawar

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**ATTESTED**

<p>Order or other proceedings with signature of Judge or Magistrate</p>	<p>1 2 3</p>	<p>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</p> <p>Service Appeal No. 639/2017</p> <p>Date of Institution ..... 16.06.2017</p> <p>Date of Decision ..... 13.12.2018</p> <p>Mr. Luft-E-Hakeem, Muslim Sweeper (BPS-01) DHQ Hospital timer Garra, District Dir Lower.</p> <p>Appellant</p> <p>Versus</p> <p>1. The Secretary Government of Khyber Pakhtunkhwa through Secretary Health Department Khyber Pakhtunkhwa Peshawar.</p> <p>2. Director General Health Department Khyber Pakhtunkhwa Peshawar.</p> <p>3. The District Health Officer, District Dir Lower.</p> <p>4. The Medical Superintendent DHQ Hospital Timergara, District Dir Lower.</p> <p>Respondents</p>	<p>St. No</p> <p>Date of</p> <p>Order/</p> <p>proceeding</p> <p>13.12.2018</p>
<p>Mr. Muhammad Hamid Mughal-----Member (J)</p> <p>Mr. Ahmad Hassan-----Member (E)</p>	<p>JUDGMENT</p> <p>MUHAMMAD HAMID MUGHAL, MEMBER. - Mr. Noor</p>	<p>Muhammad, learned counsel for appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General for the respondents present.</p> <p>2. This single judgment in the above captioned appeal, shall also dispose of appeals (1) bearing No.640/2017 filed by Rab Nawaz</p>	<p>ATTESTED</p> <p>Signature</p> <p>Khyber Pakhtunkhwa Service Tribunal Peshawar</p>



E-15

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respondent No.1 whereby the respondent department accepted the Tribunal Act 1974, against the order dated 16.02.2017 of the filed the present service appeal u/s 4 of Khyber Pakhtunkhwa Service DHQ Hospital Timerga District Dir Lower in the year 2009 has

3. The appellant, who was appointed as Sweeper (Muslim) at same law, facts and circumstances filed by Shah Khalid being identical in nature, having arisen from the No.730/2017 filed by Shahid Hussain (25). bearing No.731/2017 Ullah (23). bearing No.729/2017 filed by Umar Hakim (24). bearing filed by Miraj ud Din (22). bearing No. 728/2017 filed by Habib No. 726/2017 filed by Gohar Rehman (21). bearing No.727/2017 (19). bearing No.725/2017 filed by Rehmat Ali Shah (20). bearing by Abdur Rehman (18). bearing No. 724/2017 filed by Ismail Shah 655/2017 filed by Muhammad Haq (17). bearing No.656/2017 filed bearing No.654/2017 filed by Aftab ud Din (16). bearing No. Rehman (14). bearing No.653/2017 filed by Shams ul Islam (15). by Sadig Muhammad (13). bearing No. 652/2017 filed by Said No.650/2017 filed by Kifayat Ullah (12). bearing No.651/2017 filed (10). bearing No.649/2017 filed by Gul Saeed Khan (11). bearing Bakht Shah Zeb (9). bearing No. 648/2017 filed by Bakhtiar Khan No.646/2017 filed by Siraj ud Din (8). bearing No.647/2017 filed by (6). bearing No.645/2017 filed by Khyal Muhammad (7). bearing Dilawar Khan (5). bearing No. 644/2017 filed by Hamid ur Rehman 642/2017 filed by Akhtar Rasool (4). bearing No.643/2017 filed by (2). bearing No.641/2017 filed by Sahib Ullah (3). bearing No.

ATTESTED  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

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right of Muslim Sweepers appointed before 12.07.2006 for their adjustment against the post of Ward Orderly, Chowkidar, Mali, Dai, Aya and other Class-IV posts on seniority basis and thereby deprived the Muslim Sweepers appointed after 12.07.2006 to be adjusted as such. Learned counsel for the appellant mainly argued that the impugned order is a sheer example of discriminatory treatment to Muslim Sweepers appointed as such after 12.07.2006.

4. On the other hand learned Additional Advocate General defended the impugned order on the ground that the appellant himself was appointed as Muslim Sweeper in violation of policy decision dated 12.07.2006.

5. Arguments heard. File perused.

6. The respondent department vide its policy decision dated 12.07.2006 decided that all the Health Institutions should promote the Muslim Sweepers against the existing vacancies of Ward Orderly, Chowkidar, Mali, Dai, Aya and other Class-IV posts, on seniority basis and not to appoint Muslim Sweeper against the post of Sweeper in future.

7. It was due to the violation of policy decision dated 12.07.2006 that many Muslim Sweepers had to knock the door of Hon'ble Peshawar High Court. The violation of policy decision led the respondent department to the issuance of fresh order dated 16.02.2017 made partially impugned in the present service appeal.

8. Upon the examination of the impugned order dated 16.02.2017, this Tribunal came to the conclusion that the same

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SECRETARY  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar


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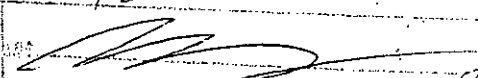
also in violation of policy decision dated 12.07.2006 in as much as according to the policy decision dated 12.07.2006 gradually all the Muslim Sweepers would have to be adjusted against other Class-IV posts.

9. Impugned order dated 16.02.2017 has the effect of depriving the appellant from his adjustment against other Class-IV post just for the reason that he was appointed as Muslim Sweeper after 12.07.2006. This Tribunal is therefore of the considered opinion that discriminatory treatment was met out to the appellant.


10. Resultantly this Tribunal holds that the cut off date i.e. 12.07.2006 as mentioned in the impugned order dated 16.02.2017 shall be treated as expunged. The present service appeal alongwith connected service appeals as mentioned in para-2 of this judgment are accepted in the above terms. The respondent department is directed to take strict disciplinary action against those responsible for inducting Muslim Sweepers in violation of the policy decision dated 12.07.2006. Parties are left to bear their own costs. File be consigned to the record room.

  
(Ahmad Hassan)  
Member

  
**ATTESTED**  
(Muhammad Hamid Mughal)  
Member

<b>ANNOUNCED</b>	Date of Presentation of Copy	31-1-19
13.12.2018	Number of Words	1600
	Copying Fee	10
	Urgent	2
	Total	12
	Name of Copyist	
	Date of Completion of Copy	31-1-19
	Date of Delivery of Copy	31-1-19

Consigned to be made copy

  
Tribunal

To,

F-19

The Director General Health Services,  
Khyber Pakhtunkhwa, Peshawar.

Subject: DEPARTMENTAL APPEAL FOR ADJUSTMENT AGAINST  
ANY OTHER CLASS-IV POST

Respected Sir,

It is most humbly stated that I am serving as Sweeper (Muslim) before your good self at DHQ Hospital Battagram since 2009 quite efficiently and upto the entire satisfaction of my superiors. During my so many colleagues were adjusted against other class-iv posts on the directions of the Honorable Peshawar High Court, and the august Khyber Pakhtunkhwa Service Tribunal, Peshawar. Respected Sir I am the similar employee and I am also entitle for adjustment against any other class-iv post under the principle of consistency, therefore, I may also be similarly treated by adjusting against the said other class-vi post.

It is therefore, most humbly prayed that on acceptance of this Departmental appeal I may very kindly be adjusted against any other class-iv post i.e. ward orderly, chowkidar and Mali. Any other remedy which your good self deems fit that may also be awarded in favor of me.

Dated: 12.03.2019.

APPLICANT

*[Signature]*

MUHAMMAD HAROON, (Sweeper)

DHQ Hospital Battagram

**ATTESTED**

*[Signature]*

**VAKALATNAMA**

Before the KP Service Tribunal, Peshawar

OF 2019

Muhammad Haroon

(APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

**VERSUS**

Health Department

(RESPONDENT)  
(DEFENDANT)

I/We Muhammad Haroon

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. 25 / 6 / 2019

Ha  
CLIENT

q  
ACCEPTED  
NOOR MOHAMMAD KHATTAK

SHAHZULLAH KHAN YOUSAFZAI

M-Z  
&  
MIR ZAMAN SAFI  
ADVOCATES

**OFFICE:**

Flat No.3, Upper Floor,  
Islamia Club Building, Khyber Bazar,  
Peshawar City.  
Phone: 091-2211391  
Mobile No. **0345-9383141**

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1424 /ST

Dated 16 / 8 / 2019


To

The District Health Officer,  
Government of Khyber Pakhtunkhwa,  
Battagram.

Subject: - JUDGMENT IN APPEAL NO. 900/2019, MR. MUHAMMAD HAROON.

I am directed to forward herewith a certified copy of Judgement dated 26.06.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.